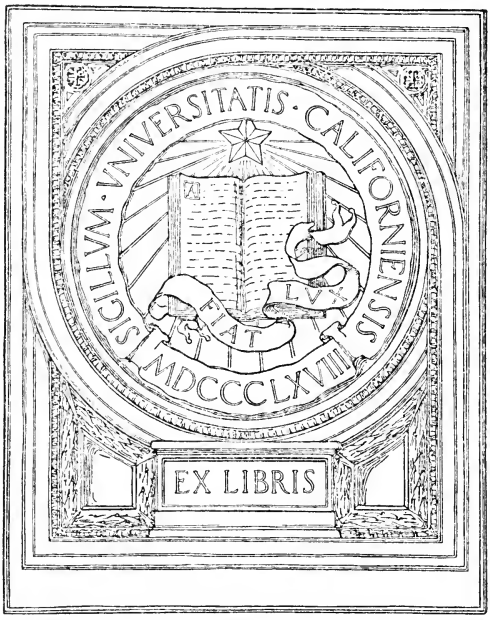
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AN
IMPORTANT
AND
LUMINOUS COMMUNICATION
ON THE
SUBJECT OF THE
IMPRESSMENT OF AMERICAN AND FOREIGN
SEAMEN
AND OTHER PERSONS.

IT has become manifest to every attentive observer, that the early and continued aggressions of Great Britain on our persons, our property, and our rights, imperiously demand a firm stand--an effectual, though calm system of measures of arrestation. For this purpose, it is our duty to make ourselves completely masters of the great truths and arguments by which our rights have been elucidated, supported and maintained.

On the 17th of January, 1806, the President of the United States communicated to Congress an extract from a dispatch of James Madison, Esq. our secretary of state, to James Monroe Esq. our minister in London, which contains many facts highly important, and observations and arguments perfectly satisfactory and conclusive against "*impressments* of seamen and passengers, whether Foreign or American, on board of our vessels." The re-publication of that document at this crisis will at once display some of the reasons on which the government has probably declined to sanction the recent draught of a treaty with Great Britain, and will elucidate the ground on which the question of *the impressment of persons*, both native and alien, has been rested by our administration.

Extract of a letter from the Secretary of State to James Monroe, Esq. dated 5th January, 1804.

We consider a neutral flag, on the high seas, as a safeguard to those sailing under it. Great Britain, on the contrary, asserts a right to search for, and seize her own subjects; and un-

der that cover, as cannot but happen, are often seized and taken off, citizens of the United States, and citizens or subjects of other neutral countries, navigating the high seas, under the protection of the American flag.

Were the right of Great Britain, in this case, not denied, the abuses flowing from it, would justify the United States in claiming and expecting a discontinuance of its exercise. But the right is denied, and on the best grounds.

Although Great Britain has not yet adopted, in the same latitude with most other nations, the immunities of a neutral flag, she will not deny the general freedom of the high seas, and of neutral vessels navigating them, with such exceptions only as are annexed to it by the law of nations. She must produce then such an exception in the law of nations, in favor of the right she contends for. But in what written and received authority will she find it? in what usage except her own, will it be found? She will find in both, that a neutral vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port, nor as she has maintained, and as we have not contested, enemies property of any kind. But no where will she find an exception to this freedom of the seas, and of neutral flags, which justifies the taking away of *any* person, *not an enemy in military service*, found on board a neutral vessel.

If treaties, British as well as others, are to be consulted on this subject, it will equally appear, that no countenance to the practice can be found in them. Whilst they admit a contraband of war, by enumerating its articles, and the effect of a real blockade by defining it, *in no instance* do they affirm or imply a *right in any sovereign to inforce his claims to the allegiance of his subjects, on board neutral vessels on the high seas.* On the contrary, whenever a belligerent claim against persons on board a neutral vessel, is refered to in treaties, enemies in military service *alone* are excepted from the general immunity of persons in that situation; and this exception confirms the immunity of those who are not included in it.

It is not then from the law or the usage of nations, nor from the tenor of the treaties, that any sanction can be derived for the practice in question. And surely it will not be pretended that the sovereignty of any nation, extends in any case whatever, *beyond its own dominions*, and *its own vessels on the high seas.* Such a doctrine would give just alarm to all nations, and more than any thing would countenance the imputation of aspiring to an universal empire of the seas. It would be the less admissible too, as it would be applicable to times of peace, as well as to times of war, and to property as well as to persons. If the law

of allegiance, which is a *municipal* law, be in force at all on the high seas, on board foreign vessels, it must be so at all times there, as it is within its acknowledged sphere. If the reason alleged for it be good in time of war, namely, that the sovereign has then a right to the service of all his subjects, it must bo good at all times, because at all times he has the same right to their service. War is not the only occasion for which he may want their services, nor is external danger the only danger against which their services may be required, for his security. Again; if the authority of a *municipal* law can operate on persons in foreign vessels on the high seas, because within the dominion of their sovereign they would be subject to that law, and are violating that law by being in that situation, how reject the inference that the authority of a *municipal* law may equally be enforced, on board foreign vessels, on the high seas, against articles of *property* exported in violation of such a law, or belonging to the country from which it was exported? and thus every commercial regulation, in time of peace too, as well as of war, would be made obligatory on foreigners and their vessels, not only whilst within the dominion of the sovereign making the regulation, but in every sea, and at every distance where an armed vessel might meet with them. Another inference deserves attention. If the subjects of one sovereign may be taken by force from the vessels of another, on the high seas, the right of taking them when found, implies the right of searching for them, a vexation of commerce, especially in the time of peace, which has not yet been attempted, and which for that as well as other reasons, may be regarded as contradicting the principle, from which it would flow.

Taking reason and justice for the tests of this practice, it is peculiarly indefensible; because it deprives *the dearest rights* of a regular *trial*, to which the most inconsiderable article of property captured on the high seas, is entitled; and leaves their destiny to the will of an officer, sometimes cruel, often ignorant, and generally interested by his want of mariners, in his own decisions. Whenever property found in a neutral vessel, is supposed to be liable, on any grounds to capture and condemnation, the rule in all cases is that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages, for an abuse of his power. Can it be reasonable then, or just, that a belligerent commander, who is thus restricted, and thus responsible in a case of mere property of trivial amount, shold be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into instant execution, by forcing every individual he may chuse, into a service abhorent to his feelings, cutting him off from his most tender connections, exposing his mind and his

person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice and humanity unite in protesting against so extravagant a proceeding. And what is the pretext for it? It is that the similarity of language and of features between American citizens and British subjects, are such as not easily to be distinguished; and that without this arbitrary and summary authority to make the distinction, British subjects would escape, under the name of American citizens. from the duty which they owe to their sovereign. Is then the difficulty of distinguishing a mariner of one country from the mariner of the other, and the importance of his services, a good plea for refering the question whether he belongs to the one or to the other, to an arbitrary decision on the spot, by an interested and unresponsible officer? In all other cases, the difficulty and the importance of questions are considered as reasons for requiring greater care and formality in investigating them, and greater security for a right decision on them. To say that precautions of this sort are incompatible with the object is to admit the object is unjustifiable; since the only means by which it can be pursued are such as cannot be justified.

The evil takes a deeper die, when viewed in its practice as well as its principles. Were it allowable that British subjects should be taken out of American vessels on the high seas, it might at least be required that the proof of their allegiance should lie on the British side. This obvious and just rule is, however, reversed; and every seaman on board, though going from an American port, and sailing under the American flag, and sometimes even speaking an idiom proving him not to be a British subject, is presumed to be such, unless shewn to be an American citizen. It may safely be affirmed that this is an outrage and an indignity which has no precedent, and which Great Britain would be among the last nations in the world to suffer, if offered to her own subjects, and her own flag. Nor is it always against the right presumption alone, which is in favor of the citizenship corresponding with the flag, that the violence is committed. Not unfrequently it takes place in defiance of the most positive proof, certified in due form by an American officer. Let it not be said, that in granting to American seamen this protection for their rights as such, the point is yielded, that the proof lies on the American side, and that the want of it in the prescribed form justifies the inference that the seamen is not of American allegiance. It is distinctly to be understood, that the certificate usually called a protection to American seamen, is not meant to protect them *under their own, or even any other neutral flag* on the high seas. We can never admit, that in such a situation, any other protection is

required for them, than *the neutral flag itself* on the high seas. The document is given to prove their real character, in situations to which neither the law of nations, nor the law of their own country, are applicable; in other words, to protect them within the jurisdiction of the British laws, and to secure to them, within every other jurisdiction, the rights and immunities due to them. If, in the course of their navigation even on the high seas, the document should have the effect of repelling wrongs of any sort, it is an incidental advantage only, of which they avail themselves, and is by no means to be misconstrued into a right to exact such a proof, or to make any disadvantageous inference from the want of it.

Were it even admitted, that certificates for protection might be justly required in time of war, from American seamen, they could only be required in cases where the lapse of time from its commencement, had given an opportunity for the American seamen to provide themselves with such a document. Yet it is certain, that in a variety of instances, seamen have been impressed from American vessels, on the plea that they had not this proof of citizenship, when the dates and places of the impressments demonstrated the impossibility of their knowing in time to provide the proof, that a state of war had rendered, it necessary.

Whether, therefore, we consult the law of nations, the tenor of treaties, or the dictates of reason and justice, *no warrant, no pretext can be found for the British practice of making impressments from American vessels on the high seas.*

Great Britain has the less to say in excuse for this practice, as it is in direct contradiction to the principles, on which she proceeds in other cases. Whilst she claims and seizes on the high seas, her own subjects, voluntarily serving in American vessels, she has constantly given, when she could give, as reason for not discharging from her service American citizens, that they had voluntarily engaged in it. Nay, more, whilst she impresses her own subjects from the American service, although they may have been settled and married, and even naturalized in the United States, she constantly refuses to release from hers, American citizens impressed into it, whenever she can give for a reason, that they were either settled or married with in her dominions. Thus, when the voluntary consent of the individual favors her pretensions, she pleads the validity of that consent. When the voluntary consent of the individuals stands in the way of her pretensions, *it goes for nothing!* When marriage or residence can be pleaded in her favor, she avails herself of the plea. When marriage and residence and even naturalization are against her, no respect whatever is paid to either!

She takes, by force, her own subjects voluntarily serving in our vessels. She keeps by force American citizens involuntarily serving in hers. More flagrant inconsistencies cannot be imagined.

Notwithstanding the powerful motives, which ought to be felt by the British government to relinquish a practice which exposes it to so many reproaches, it is foreseen, that objections of different sorts will be pressed on you. You will be told first, of the great number of British seamen in the American trade, and of the necessity for their services in time of war and danger. Secondly, of the right and the prejudice of the British nation with respect to what are called the British or narrow seas, where its domain would be abandoned by the general stipulation required. Thirdly, of the use which would be made of such a sanctuary as that of American vessels, for desertions, and traitorous communications to her enemies, especially across the channel to France.

1st. With respect to the British seamen serving in our trade, it may be remarked, first, that the number, though considerable, is probably less than may be supposed, Secondly, that what is wrong in itself cannot be made right by considerations of expediency or advantage. Thirdly, that it is proved by the fact that the number of real British subjects gained by the practice in question, is of considerable importance even in the scale of advantage. The annexed report to congress on the subject of impressments, with the addition of such cases as may be in the hands of Mr. Erving, then our consul in London, will verify the remark in its application to the present war. The statement made by his predecessor during the last war, and which is also annexed, is in the same view still more conclusive. The statement comprehends not only all the applications made by him in the first instance, for the liberation of impressed seamen, between the month of June, 1797, and Sept. 1801, but many also which had been made previous to this agency, by Mr. Pinckney and Mr. King, and which it was necessary for him to renew. These applications therefore may fairly be considered as embracing the greater part of the period of the war; and as applications are known to be pretty indiscriminately made, they may further be considered as embracing if not the whole, the far greater part of the impressments, those of British subjects as well as others. Yet the result exhibits 2,059 cases only, and of this number 102 seamen only, detained as being British subjects, which is less than $2\frac{1}{9}$ of the number impressed, and 1,142 discharged or ordered to be so, as not being British subjects, which is more than half of the whole number, leaving 805 for further proof, with the strongest presumption, that the greater part, if not the whole,

were Americans or other aliens, whose proof of citizenship had been lost or destroyed, or whose situation would account for the difficulties and delays in producing it. So that it is certain, that for all the British seamen gained by this violent proceeding, more than an equal number, who were not so, were the victims; it is highly probable that for every British seamen so gained, a number of others, less than 10 for one, must have been the victims, and it is even possible that this number may have exceeded the proportion of twenty to one.

It cannot therefore be doubted, that the acquisition of British seamen, by these impressments, whatever may be its advantage, is lost in the wrong done to Americans ignorantly or willfully mistaken for British subjects, in the jealousy and ill-will excited among all maritime nations by an adherence to such a practice, and in the particular provocation to measures of redress on the part of the United States, not less disagreeable to them, than embarrassing to Great Britain, and which may threaten the good understanding which ought to be faithfully cultivated by both. The copy of a bill brought into congress under the influence of violations committed on our flag, gives force to this latter consideration. Whether it will pass into a law, and at the present session, is more than can yet be said. As there is every reason to believe that it has been proposed with reluctance, it will probably not be pursued into effect, if any hope can be supported of a remedy, by an amicable arrangement between the two nations.

There is a further consideration which ought to have weight in this question. Although the British seamen employed in carrying on American commerce, be in some respects lost to their own nation, yet such is the intimate and extensive connection of this commerce, direct and circuitous, with the commerce, the manufactures, the revenue and the general resources of the British nation, that in other respects its mariners, on board American vessels, may truly be said to be rendering it the most valuable services. It would not be extravagant to make it a question, whether Great Britain would not suffer more by withdrawing her seamen from the merchant vessels of the United States, than her enemies would suffer from the addition of them to the crews of her ships of war and cruisers.

Should any difficulty be started concerning seamen born within the British dominions, and naturalized by the United States since the treaty of 1783, you may remove it by observing; First, that very few, if any, such naturalizations can take place, the law here requiring a preparatory residence of five years, with notice of the intention to become a citizen entered of record two years before the last necessary formality, besides a regular proof of good and moral character, conditions little likely to be complied

with by ordinary seafaring persons. Secondly, that a discontinuance of impressments on the high seas will preclude an actual collission between the interfering claims. Within the jurisdiction of each nation, and in their respective vessels on the high seas, each will enforce the allegiance which it claims. In other situations the individuals doubly claimed, will be within a jurisdiction independent of both nations.

Secondly. The British pretensions to domain over the narrow seas are so obsolete, and so indefensible, that they never would have occured as a probable objection in this case, if they had not actually frustrated an arrangement settled by Mr. King with the British ministry on the subject of impressments from American vessels on the high seas. At the moment when the articles were expected to be signed, an exception of the ', narrow seas" was urged and insisted on by lord St. Vincent; and being utterly inadmissible on our part, the negociation was abandoned,

The objection in itself has certainly not the slightest foundation. The time has been indeed when England not only claimed, but exercised pretensions scarcely inferior to full sovereignty over the seas surrounding the British isles, and even as far as cape Finistere to the south, and Van Staten, in Norway, to the north. It was a time, however, when reason had little share in determining the law, and the intercourse of nations, when power alone decided questions of right, and when the ignorance and want of concert among other maritime countries facilitated such an usurpation. The progress of civilization and information has produced a change in all those respects, and no principle in the code of public law, is at present better established, than the common freedom of the seas beyond a very limited distance from territories washed by them. This distance is not indeed fixed with absolute precision. It is varied in a small degree by written authorities, and perhaps it may be reasonably varied in some degree by local peculiarities. But the greatest distance which would now be listened to any where, would make a small proportion of the narrowest part of the narrowest seas in question.

What are, in fact, the prerogatives claimed and exercised by Great Britain over these seas? If they were really a part of her domain, her authority would be the same there as within her other domain. Foreign vessels would be subject to all the laws and regulations framed for them, as much as if they were within the harbours or rivers of the country. Nothing of this sort is pretended. Nothing of this sort will be tolerated. The only instances in which these seas are distinguished from other seas, or in which Great Britain enjoys within them, any distinction over other nations, are first, the compliment paid by other flags to hers. Secondly, the extension of her territorial jurisdiction in

certain cases to the distance of four leagues from the coast. The first is a relic of ancient usurpation, which has thus long escaped the correction, which modern and more enlightened times have applied to other usurpations. The preogative has been often contested, however, even at the expense of bloody wars, and is still borne with ill will and impatience by her neighbors. At the last treaty of peace at Amiens, the abolition of it was repeatedly and strongly pressed by France; and it is not improbable, that at no remote day it will follow the fate of the title of "King of France," so long worn by the British monarchs, and at length so properly sacrificed to the lessons of a magnanimous wisdom. As far as this homage to the British flag has any foundation at present, it rests merely on long usage and long acquiessence, which are construed, as in a few other cases of maritime claims, into the effect of a general though tacit convention. The second instance is the extension of the territorial jurisdiction to four leagues from the shore. This too, as far as the distance may exceed that which is generally allowed, rests on a like foundation, strengthened, perhaps. by the local facility of smuggling, and the peculiar interest which Great Britain has in preventing a practice affecting so deeply her whole system of revenue, commerce, and manufactures; whilst the limitation itself to four leagues necessarily implies that beyond that distance no territorial jurisdiction is assumed.

But whatever may be the origin or value of these prerogatives over foreign flags in one case, and within a limited portion of these seas in another, it is obvious that neither of them will be violated by the exemption of American vessels from impressments, which are no wise connected with either; having never been made on the pretext either of withholding the wonted homage to the British flag, or of smuggling in defiance of British laws.

This extension of the British law to four leagues from the shore is inferred from an act of parliament passed in the year 1736, (9 G. 2. C. 35) the terms of which comprehended all vessels, foreign as well as British. It is possible however, that the former are constructively excepted.—Should your inquiries ascertain this to be the case, you will find yourself on better ground, that the concession here made.

With respect to the compliment paid to the British flag, it is also possible that more is here conceded than you may find to be necessary. After the peace of 1783, this compliment was peremptorily withheld by France, in spite of the remonstrances of Great Britain; and it remains for your inquiry, whether it did not continue to be refused, notwithstanding the failure at Amiens to obtain from Great Britain a formal renunciation of the claim.

From every view of the subject, it is reasonable to expect that the exception of the narrow seas, from the stipulation against impressments, will not be inflexibly maintained. Should it be so, your negociation, will be at an end. The truth is, that so great a proportion of our trade direct and circuitous, passes through those channels, and such is its peculiar exposure in them to the wrong practised, that with such an exception, any remedy would be very partial. And we can never consent to purchase a partial remedy, by confirming a general evil, and by subjecting ourselves to our own reproaches, as well as to those of other nations.

Third, It appears, as well by a letter from Mr. Thornton, in answer to one from me, of both which copies are inclosed, as from conversations with Mr. Merry, that the facility which would be given, particularly in the British channel, by the immunity claimed for American vessels, to the escape of traitors, and the desertation of others whose services in time of war may be particularly important to an enemy, forms one of the pleas for the British practice of examining American crews, and will be one of the objections to a formal relinquishment of it.

This plea, like all the others, admits a solid and satisfactory reply. In the first place, if it could prevail at all against the neutral claim, it would authorize the seizure of the persons described only, and in vessels bound to a hostile country only; whereas the practice of impressing is applied to persons few if any of whom are alleged to be of either description, and to vessels whithersoever bound, even to Great Britain herself. In the next place, it is not only a preference of a smaller object on one side to a greater object on the other; but a sacrifice of right on one side, to expediency on the other side.